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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Rulemaking for the Purposes of Revising
General Order 96-A Regarding Informal
Filings at the Commission.

R. 98-07-038

**OPENING COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 M),
SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E),
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G),
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M),
AND SOUTHWEST GAS CORPORATION (U 905 G)
ON PROPOSED DECISION OF COMMISSIONER PEEVEY**

ANDREW L. NIVEN
ANN H. KIM

Law Department
Pacific Gas and Electric Company
Post Office Box 7442
San Francisco, CA 94120
Telephone: (415) 973-7467
Fax: (415) 973-0516
E-mail: ahk4@pge.com

Attorneys for
Pacific Gas and Electric Company

ON BEHALF OF THE JOINT ENERGY UTILITIES

January 9, 2007

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Pursuant to Article 19 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the *Administrative Law Judge's Ruling Extending Date For Comments*, dated December 20, 2006, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Southwest Gas Corporation (collectively, the Joint Energy Utilities) submit these comments on the Proposed Decision (PD) of Commission President Peevey.

The Joint Energy Utilities applaud the Commission for its diligence in revising General Order (GO) 96-A, particularly with respect to the tiered system of advice letters. The Joint Energy Utilities also appreciate the Commission's efforts to bring an end to this long-pending rulemaking¹ and to supplant the three interim decisions with a comprehensive GO 96-B. The new GO 96-B represents a significant step forward in improving the efficiency and rationality of the advice letter process.

The Joint Energy Utilities have serious concerns, however, with the change in tariff

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This rulemaking was opened eight and one-half years ago, and most of the changes to GO 96-A proposed in the PD were initially contemplated in the late 1990s. At that time, the regulatory paradigm anticipated for energy utilities was modeled after the then-recently deregulated telecommunications industry, and the Commission saw the need for a competitive tariff regulatory structure for energy utilities. Much has happened since that time: electric deregulation, the energy crisis, and the return to cost-of-service ratemaking. In considering these comments on the PD, the Joint Energy Utilities respectfully request that the Commission view the original purpose of the proceeding with this historical perspective and with the recognition that regulatory conditions have changed.

numbering system proposed in General Rule 8.4; the changes in governmental agency contract procedures proposed in General Rule 8.2.3; the new noticing requirements proposed in General Rule 4.2; the new confidentiality provisions of General Rule 9.0 *et seq*; the notice to correct tariffs procedure proposed in General Rule 8.3; and the penalty provision of General Rule 7.5.3. These proposed provisions of GO 96-B are counterproductive and create inefficient practices for the Commission and regulated utilities. In addition, the proposed changes will impose substantial administrative and technical burdens on affected utilities, without evidence of offsetting material benefit from the changes. The Joint Energy Utilities urge the Commission to adopt GO 96-B without these burdensome provisions. (The Joint Energy Utilities' recommended changes to the PD and GO 96-B are shown in Appendix A to these comments.) In addition to adopting the modifications proposed herein, the Joint Energy Utilities recommend that the Commission convene workshops² and, if needed, open a new rulemaking to address specific concerns regarding implementation of (and potential clarifying modifications to) the new rules.

I. THE JOINT ENERGY UTILITIES SUPPORT GO 96-B'S TIERED ADVICE LETTER SYSTEM BUT REQUEST A GRACE PERIOD TO IMPLEMENT.

The PD proposes a significant revision to GO 96-A: the creation of three tiers of advice letters, with each tier requiring a different level of review and approval. The Joint Energy Utilities support this revision. Given the substantial increase in advice letters, the Commission and stakeholders alike would benefit from the efficiency and clarity of the tiered system.

While the new tiered system represents an improvement to the current process, it will take time to learn and implement. In particular, utilities may have difficulty initially determining whether certain advice letters should be categorized as Tier 2 or Tier 3. To address this issue, the Joint Energy Utilities recommend that the Commission adopt a "grace period" during the first 6 months to 1 year that this system is in place, during which the Industry Division would

² In addition to their opposition to consecutive tariff numbering, the Joint Energy Utilities also have critical implementation questions about other provisions of General Rules 8.4 and 8.5 on tariff format and contents that would benefit from clarification through workshops.

notify the utility of any erroneous tier designations and give the utility an opportunity to correct or re-designate the applicable tier, rather than simply rejecting the advice letter without prejudice. This will simplify the transition and allow the Commission staff and utilities to familiarize themselves with the new filing requirements.³

II. THE CURRENT TARIFF SHEET NUMBERING SYSTEM SHOULD BE RETAINED.

The Joint Energy Utilities strongly oppose the new tariff numbering system proposed in General Rule 8.4.⁴ In proposing the new system, the PD errs in two ways: first, it fails to recognize the substantial benefits of the current numbering system over the proposed new system; second, it also gives short shrift to the considerable burdens imposed by the new numbering system. The Joint Energy Utilities respectfully request that, to avoid these errors, the Commission revise the PD to retain the current tariff numbering system. If the Commission continues to have concerns about the tariff numbering system, the Joint Energy Utilities propose that it convene a workshop or provide some opportunity for utilities to submit affidavits regarding the costs and burdens of the new tariff numbering system so that the proper foundation and implications for so sweeping a change can be raised and fairly evaluated.

A. The Current Tariff Numbering System Has Many Benefits Over The Proposed Consecutive System.

The PD's proposal to change the tariff numbering system has its roots in the PD issued five years ago by then-Assigned ALJ Kotz, in which he proposed "consecutive numbering, starting with tariff sheet 1."⁵ Both the Kotz PD and Peevey PD claim that consecutively numbered tariff sheets represent "improvements" (Kotz PD, p. 35) that will produce "many

³ In addition, with respect to any filing erroneously designated as Tier 1 (effective pending disposition), the Industry Division could prevent any adverse effect upon customers by immediately staying the implementation of the advice letter upon correct re-designation, which yields the same outcome as if the advice letter had been rejected without prejudice.

⁴ Please note that Southwest Gas' South Lake Tahoe district already employs a consecutive tariff numbering system. This situation is distinguishable from that of other energy utilities, however, in that the district in question is small and its tariffs are relatively simple as compared to those of the other Joint Energy Utilities. In light of its existing practices, Southwest Gas supports the other utilities but does not have similar argument.

⁵ See Draft Decision of ALJ Kotz (mailed February 14, 2001), at p. 36.

benefits in more easily used tariffs.” (PD, p. 36.)

There is no evidence that consecutive numbering will result in “more easily used tariffs.” As PG&E pointed out in its opening comments on ALJ Kotz’s PD (at p. 6), non-tariff personnel do not commonly refer to or use tariff sheet numbers. Rather, tariffs are generally referred to by their titles and page numbers. For example, customers, Commission staff, and utility personnel alike are far more likely to refer to “page 3 Schedule E-1” than “Tariff Sheet Number 102909.” In contrast, the FCC system uses sheet numbers that span the entire tariff book or tariff book section, such as “Sheet 255.1.2” Since this system does not easily accommodate the insertion of sheets over time, tariff readers have no way of verifying that all pages of a given schedule are present. The system is thus far less workable as compared to the current, more intuitively understandable system. Therefore, the sole “benefit” of the consecutive numbering system has no evidentiary or real-world basis.

In addition, a tariff often must be expanded by a page or more due to new regulatory or market changes. In such cases, the insertion of new pages is easily accomplished with the current, chronological numbering system. The page sequence, which is independent of the sheet numbers, is maintained under the current numbering system, which calls for both new and retained pages to be filed to preserve both the historical context and new changes. In contrast, under the proposed “consecutive” system, the sequential use of page numbers would be severed.⁶

Similarly, when a section of tariff text must be deleted, the consecutive system would require remaining text to be retained “in place” among the remaining pages of the tariff, as opposed to being redistributed with each filing, as is currently done. As a result, as is often the case with tariffs currently in effect at the FCC and by CPUC-jurisdictional telecommunication utilities, there may be pages-long empty gaps of half-empty sheets within a tariff, which are not only unsightly and administratively inefficient but confusing to consumers and others reading the

⁶ Consider, for example, a six-page tariff that requires the insertion of a page and a half of new text near the front of the tariff. The tariff now is eight pages in length, but under the proposed “consecutive” system, the contents of the pages need to be advanced and distributed from page to page. The new sheets will cancel two or more sheets to show the movement of text from sheet to sheet.

tariffs. In contrast, the current numbering system avoids having blank pages—or a series of blank pages—as well as the inevitable questions associated with the deleted text. In summary, the current system is “self-cleansing” during episodes of content insertions and deletions, whereas the proposed system would result in the loss of an understandable, workable tariff page numbering format, confusing inserted sheet number formats, and gaps of empty content which can only be corrected through a complete re-filing of the tariff book.

Moreover, for the Joint Energy Utilities, their “tariff book” consists of hundreds of tariffs with literally thousands of tariff sheets. Each year, the Joint Energy Utilities file nearly 15,000 tariff sheets with the Commission.⁷ Since the current numbering system was implemented in 1919, Southern California Gas Company alone has historical tariffs comprising approximately 42,000 tariff sheets. The current numbering system affords the Commission and customers a straightforward means to track historically each unique sheet as far back as that date. Tariffs often change dramatically due to changing market conditions and regulatory developments. Under the current “legacy” system, all of the changes are fully traceable back in time to the tariff’s inception. Under the proposed consecutive system, however, the historical connection to prior, related tariffs will be lost because the numbering sequencing would be disaggregated between the current and proposed systems. Consequently, when an energy utility receives a request from the Commission or a customer for historical rates or tariff provisions, the current system allows for a prompt, direct answer for information, whereas the proposed system would make the required research impracticable in many, if not most, cases.

B. The New Numbering System Would Impose Considerable Burdens On The Utilities To Implement.

In previous comments, the Joint Energy Utilities raised the considerable burdens that would be imposed by the new numbering system. The PD pays short shrift to these burdens by stating (at p. 36):

⁷ In the winter heating season, various tariff sheets are revised and submitted to the Commission weekly; others are revised and filed monthly. Some tariffs require at least 20 replacement sheets in the course of a year, and thus the tracking and annotation of changes will, in a relatively short time, become impracticable.

Many comments on the rule pointed to the burden and cost of reformatting existing tariff sheets and suggested that these requirements be imposed prospectively. ... The proposed rule also allows the Industry Divisions to establish compliance schedules for utilities whose tariffs do not conform to the new requirements. This provision will allow utilities a reasonable period to bring their tariff sheets into compliance.

By proposing a “reasonable period” to implement the new numbering system, the PD fails to recognize the significant burdens associated with implementation of the new system.

As discussed above, the Joint Energy Utilities’ “tariff books” comprise hundreds of tariffs and thousands of tariff sheets. Reformatting these sheets into a new numbering system would necessitate a massive reprogramming effort at a time that the utilities are working to implement other critical Commission programs. There is also a possibility that it may not be technologically possible to maintain a web tariff book with the proposed numbering system. For some utilities, there also would be additional adverse impacts to their already complex billing systems. The cost of implementing these changes is yet unknown, but it would likely run into the hundreds of thousands, if not millions, of dollars for the Joint Energy Utilities collectively.

In addition, implementation of the proposed numbering system is likely to create significant confusion among utility and Commission staff and customers alike. Many people with expertise in the utilities’ tariffs will have to be retrained in the new tariff system. Moreover, Commission staff and customers who have existing tariffs would need to be apprised of the new tariffs and the reasons why the former tariffs have been superseded.

Furthermore, the adoption of a new tariff numbering format will necessitate an initial re-filing with the Commission of each energy utility’s tariff sheets, and the Joint Energy Utilities estimate that the new system would require ongoing “maintenance” in the form of a likely re-filing of each utility’s entire tariff book every three to five years. Doing so portends an enormous, ongoing effort for the Commission, consumer groups and individual consumers who utilize and seek to access energy utility tariffs, and jurisdictional entities. The current system, on the other hand, bypasses this avoidable, resource-consuming work.

C. The Federal Energy Regulatory Commission Itself Recognizes The Problems Associated With The Consecutive Numbering System With Respect To Electronic Tariff Filing.

In its Notice of Proposed Rulemaking (NOPR) on electronic tariff filings, the Federal Energy Regulatory Commission (FERC) discussed at length the hazards of the consecutive numbering system, particularly with respect to electronic filing, and proposed to abandon the system. The concerns raised in the FERC NOPR echo those described in these comments:

17. The concept of the tariff sheet is a hold-over from a paper filing world in which revised tariff sheets were filed so that they could replace individual pages in a tariff book. In an electronic world, there is no longer a need to physically replace pages in a tariff book. Instead, electronic filing is much more conducive to replacing only the specific tariff section involved in the revision.
18. The use of tariff sheet filing has, in the past, caused certain difficulties in finding tariff provisions....For example, reference is frequently made to General Terms and Conditions, section 12.1, rather than to the particular tariff sheet on which this section is located...
19. ...A further problem is that when a paragraph of text is added or deleted from one page of the tariff, there can be a domino effect on many of the subsequent pages...Thus, the company has to file changes to many subsequent tariff pages because their appearance changes even though there are no substantive changes on those sheets. This also makes it hard to do historical tariff research.⁸

Simply put, the consecutive numbering system is not well-suited to work with modern computer database systems, and the FERC's NOPR recognizes this technical reality by proposing to abandon the archaic system. By proposing to convert to a system of consecutive numbering, the PD would move the Commission in the wrong direction by imposing a numbering system that is better suited to the days of typewriters and hard-copy tariff books than the modern requirements of computer databases and electronic filing.

D. In Light Of The Limited Benefits And Significant Burdens Of The New Numbering System, The Commission Should Reject It Or Provide Further Opportunity To Evaluate The Relative Merits Of The Current And Proposed Systems.

In sum, the current tariff numbering system has been in place for some utilities for nearly a century; it has served the Commission, consumers, and the industry well during that time

⁸ See Notice of Proposed Rulemaking, FERC Docket No. RM01-5-000, pp. 7-10, at <http://www.ferc.gov/docs-filing/etariff/com-order.asp>.

period and has not proven deficient in any material respect. Continuing to use the current system would avoid many unwieldy and impractical administrative problems that will tend to confuse those entities and customers tasked with preparing or reviewing tariffs. Accordingly, the Joint Energy Utilities strongly recommend that the current system be retained. Alternatively, the Joint Energy Utilities seek leave to submit affidavits from tariff experts or, as a further alternative, request that the Commission convene a technical workshop in this rulemaking so that the merits and concerns regarding both the current and proposed tariff numbering systems be aired and evaluated before the current system is abandoned.

III. THE CHANGES IN GOVERNMENTAL AGENCY CONTRACT PROCEDURES PROPOSED IN GENERAL RULE 8.2.3 UNDERMINE A HISTORICALLY USEFUL PROVISION OF GO 96-A.

General Rule 8.2.3 of GO 96-B addresses the same subject matter as Section X-B of the current GO 96-A -- service to government agencies -- with one significant difference: the proposed revision would require utilities to submit an advice letter to the appropriate Industry Division and seek Commission authorization for such service. (*See also* Energy Industry Rule 5.3 (8).) The current procedure for these government service contracts has worked efficiently for many years, and the Joint Energy Utilities oppose the PD's proposal to revise it.

The current practice under Section X-B allows utilities to depart from their filed tariff schedules in their provision of service to governmental agencies, so long as the utilities "promptly **advise** the Commission thereof by Advice Letter and, where a contract has been entered into, submit four copies of such contract and Advice Letter for filing." (Emphasis added.) To the extent the Commission has any concerns about such contracts, Section X-B provides that the Commission "may, in an appropriate proceeding in the exercise of its jurisdiction, determine the reasonableness of such service...."

Thus, the procedure under Section X-B provides a greatly reduced administrative burden for the Commission and utilities and is harmless to ratepayers. This benefit is particularly valuable, given that energy utilities have literally thousands of contracts with governmental agencies for utility service, many of which expire periodically and must be renewed and re-filed.

In contrast, under the proposed GO 96-B, the Commission will necessarily have to review each of these advice letters and issue a resolution. Since the Commission may already review the reasonableness of the provision of such service in an appropriate proceeding, there does not seem to be a need for a resolution for each advice letter. The Joint Energy Utilities are not aware of any instance in at least the last ten years where the Commission has needed to review the reasonableness of these filings. Moreover, mandating Commission review and action with respect to these contracts may result in conflicts with other governmental agencies over issues such as jurisdiction and the Supremacy Clause. Thus, the proposed revision to this procedure will cause a burden on the Commission and energy utilities, and will not achieve any measure of efficiency or improvements for the Commission, the utilities, or ratepayers.

The Joint Energy Utilities therefore request that the General Rule 8.2.3 and Energy Industry Rule 5.3(8) be revised to comport with the current Section X-B procedure, and that the appropriate tier for these “governmental agency” advice letters be revised to Tier 1.

IV. THE NOTICING REQUIREMENTS PROPOSED IN GENERAL RULE 4.2 COULD BE INTERPRETED TO BE BURDENSOME AND PROBLEMATIC.

General Rule 4.2 addresses noticing requirements regarding advice letters and begins with the phrase “Unless no notice or a shorter notice period is authorized by statute....” The Joint Energy Utilities interpret this phrase to mean that the noticing requirements described in the remainder of the Rule would not apply to tariff or rate changes that have already been subject to notice or are otherwise exempt from noticing requirements. To the extent Rule 4.2 is intended to cover these types of advice letters as well, the Rule should be rejected as overly burdensome.

Many of the rate changes occurring through the advice letter process have been previously approved by Commission decision. As part of Commission Rules, notice was provided to customers by bill insert and newspaper at the beginning of the application process. Further notice is duplicative. The suggested channels for customer notice would be counterproductive to the efforts of the Joint Energy Utilities to provide customer friendly bill notices or inserts, or would otherwise cause a significant increase in costs and waste incurred by

the utilities if separate notices were sent by mail. Furthermore, many rate changes occur shortly after an advice letter is filed (such as the year-end consolidated filings), where rates are not known until a few days before they take effect. The related Energy Industry Rule 3 (4) & (5) should similarly be deleted or conformed for the aforementioned reasons.

V. THE PROPOSED CONFIDENTIALITY REQUIREMENTS MUST BE MODIFIED TO CONFORM TO STATE LAW AND COMMISSION DECISIONS.

The PD includes new rules (General Rules 9.1-9.6) that, if adopted, will govern requests for confidential treatment of information provided in advice letters or in filings made in opposition to advice letters. Although the text of the Proposed Decision acknowledges the Commission's recent decision on confidentiality of electric procurement-related data (D.06-06-066, implementing Senate Bill No. 1488), many of the provisions contained in General Rules 9.1-9.6 conflict with the Commission's determinations in D.06-06-066, and in some cases are inconsistent with California law.² As discussed below, to the extent that confidential electric procurement data are filed in an advice letter, the applicable protections of D.06-06-066 should apply. To the extent that other kinds of confidential data are filed in an advice letter, the Commission should defer to Phase 2 of Rulemaking 05-06-040, where those broader confidentiality issues are being addressed. The Joint Energy Utilities therefore recommend that the PD be modified to eliminate conflicts with state law and D.06-06-066, and to avoid placing unnecessary administrative burdens on Commission staff and utilities.

General Rule 9.3 specifies the procedures for a party to establish the confidentiality of information in advice letter filings. Through these procedures, the proposed Rule appears to restrict the information that would qualify for confidential protection solely to data for which the filing party, or the Commission, holds a "specific privilege" to prevent disclosure of the

² While the Proposed Decision states that "provisions of D.06-06-066 may supersede the confidentiality provisions of GO 96-B in the context of electric procurement and related data," it would not be sound policy for the Commission to knowingly adopt confidentiality provisions in G.O. 96-B that conflict with the requirements of D.06-06-066, or that conflict with governing California law, which could lead to numerous future disputes over which provisions are applicable to certain filings. PD at 41. Thus, the Joint Energy Utilities urge the Commission to adopt the modifications proposed herein and eliminate the conflicts altogether.

information.¹⁰ However, Public Utilities Code Section 454.5(g) expressly provides for the protection of “market sensitive” information related to electric procurement, regardless of whether the information is subject to a particular privilege (*i.e.*, attorney-client privilege). Indeed, the Commission acknowledged the expansiveness of this term in D.06-06-066, confirming that “market sensitive” information entitled to confidential protection under Section 454.5 encompasses more than trade secrets, for which California law provides a specific “privilege” against disclosure.¹¹ Similarly, the Commission’s GO 66-C precludes the public disclosure of data that would place regulated companies “at an unfair business disadvantage.” Thus, Rule 9.3 (e) and (f) should be modified to require the filing party to identify the specific privilege, “if any,” that prevents disclosure of the relevant data, consistent with Section 454.5(g).

The provisions of Section 454.5(g) also require a modification to an introductory paragraph of General Rules 9.3 and 9.3(a), with respect to the provision of access to confidential data. Section 454.5(g) authorizes only DRA and other parties that qualify as “non-market participants” to gain access to a utility’s confidential information under the procedures adopted by the Commission. Thus, as stated in D.06-06-066, “[d]ata that are confidential may be kept from market participants altogether.”¹² For this reason, the Commission recently adopted D.06-12-030, which defines “market participant” and “non-market participant” for purposes of access to confidential information. The introduction to General Rules 9.3 and 9.3(a), as currently written, suggest that any party (irrespective of whether it is a market participant or not) must be given access to confidential data if “those persons” sign a non-disclosure agreement.¹³ Pursuant to the “market participant” exclusion from access to electric procurement data required by Section 454.5(g) and D.06-06-066, General Rules 9.3 and 9.3(a) should be revised to require

¹⁰ Proposed Decision, Appendix A, at 29 (Rules 9.3(e), 9.3(f)).

¹¹ D.06-06-066, *mimeo*, pp. 49-50.

¹² D.06-06-066, Ordering Paragraph 9.

¹³ Proposed Decision, Appendix A, at 29 (Rules 9.3, 9.3(a)).

parties submitting confidential data to make such data available only to “those qualified parties” that have executed appropriate non-disclosure agreements.¹⁴

Several provisions of the PD’s confidentiality rules are inconsistent with, or fail to take into account the existence of, D.06-06-066. These provisions should be modified to ensure that the final version of GO 96-B is consistent with the governing confidentiality requirements for electric procurement-related data adopted in D.06-06-066. For example, General Rule 9.6 would permit an Industry Division to reject an advice letter without prejudice if it did not agree with the filing party’s confidentiality claim. Allowing such a unilateral determination by an Industry Division with no opportunity for appeal is entirely inconsistent with the Commission’s procedures for resolving confidentiality claims adopted in D.06-06-066, which provide for determination of confidentiality by an Assigned Commissioner or Administrative Law Judge.¹⁵ It is inappropriate, and could significantly impede the ability of filing parties to proceed with Commission directives, for Industry Divisions to reject advice filings based on their independent conclusion that confidentiality was not warranted, with no opportunity for the filing party to appeal. Indeed, General Rule 9.5 appropriately provides that third parties’ objections to confidentiality claims should be referred to the ALJ Division for final resolution if they cannot be informally resolved. The Joint Energy Utilities strongly urge the Commission to modify General Rule 9.6 to authorize the ALJ Division to resolve any confidentiality disputes between Industry Divisions and filing parties, consistent with D.06-06-066 and General Rule 9.5.

In addition, General Rule 9.4 provides that any claim of confidentiality for information submitted in connection with an advice filing will expire no later than “two years after the claim was first asserted before the Industry Division.” Under this proposed Rule, parties will be required to make additional advice filings at the end of the two-year period to extend the confidential designation for data that still warrants confidential protection, even if the additional

¹⁴ For the same reasons discussed above, Rule 9.3(h), regarding parties to whom the confidential information has been previously disclosed, should include “non-market participants” as an authorized party.

¹⁵ D.06-06-066, *mimeo*, pp. 66-67.

period of confidentiality has already been authorized by statute or Commission decision. Importantly, D.06-06-066 adopted a window of confidentiality of at least *three years* for most of the information identified as confidential in the IOU Matrix attached to the decision. PG&E, SCE, and SDG&E routinely make monthly, quarterly, and annual filings that include procurement-related information deemed confidential in D.06-06-066 (*e.g.*, resource adequacy compliance filings). If the two-year limitation proposed in General Rule 9.4 is retained, it will impose a substantial administrative burden upon the Commission to process, at least monthly, repeated advice letter filings seeking to extend the confidential protection of such information (filed both by IOUs and ESPs) to obtain the confidential protection adopted in D.06-06-066. This requirement would also impose a significant burden upon all parties filing advice letters to track each of their confidential advice filings for two years and make numerous additional filings to extend that protection where appropriate. Thus, the Joint Energy Utilities recommend that the Commission strike the two-year limit on confidentiality in General Rule 9.4 and retain the requirements that confidentiality will expire upon the earlier of (1) the end of the period specified in the initial confidentiality claim, or (2) the end of a period specified in a Commission ruling or decision regarding the data.¹⁶

Moreover, General Rules 9.2 and 9.3(d) contain provisions requiring parties to identify laws or privileges that form the basis for the confidentiality of submitted data, but fail to include Commission decisions as the basis for such confidentiality. Decisions that authorize the protection of specific types of data after a Commission proceeding examining the sensitivity of such data, such as D.06-06-066, clearly form an appropriate basis for protection of the data and should be included as such in the proposed Rules. For the same reason, it is not necessary for parties to provide “detailed justifications” for the length of confidentiality sought, as currently stated in General Rule 9.2(c), when the basis of the confidentiality claim is a Commission

¹⁶ In the alternative, to the extent the Commission wants to retain a set time period for expiration of confidentiality, the Joint Energy Utilities request that General Rule 9.4 provide a default period of at least three years, in order to avoid the administrative burdens described above due to the conflict with the confidentiality window adopted for the vast majority of information deemed confidential in D.06-06-066.

decision that already specifies the amount of time the data shall remain confidential. The Joint Energy Utilities therefore request that General Rules 9.2, 9.3(c), and 9.3(d) be modified.

Finally, two additional modifications are warranted in order to avoid significant administrative burdens upon Commission staff and filing parties. First, the initial introductory paragraph of General Rule 9.3 would require parties to submit a proposed protective order with every advice filing containing information not already subject to such an order. This will significantly increase the size of many advice filings that include confidential data that is not currently subject to standing protective orders (i.e. much of the data deemed confidential in D.06-06-066). Rather than repeatedly submitting protective orders for such data, parties should be permitted to submit a single protective order for advice filings containing such data and reference that protective order in future filings, once it has been approved. Second, General Rule 9.3(h) should be revised to require the person signing an advice letter to state only whether “to the best of my knowledge,” the data has ever been disclosed to a third party. It is not reasonable, and would be incredibly burdensome, to require the single person signing an advice letter to independently know every instance in which certain information may have been used.

VI. NOTICES TO CORRECT TARIFFS SHOULD BE RESOLVED THROUGH THE USE OF SUBSTITUTE SHEETS UNDER APPROPRIATE CIRCUMSTANCES.

General Rule 8.3 describes the process for an Industry Division to issue a notice to correct with respect to a utility’s tariff and for the utility to respond to the notice. The Joint Energy Utilities do not object to this process, but recommend it be modified to reduce the Commission’s administrative burden in processing utility responses and to be consistent with current practice.

General Rule 8.3 currently provides that a utility may respond to a notice to correct by either submitting (1) “an advice letter proposing corrective action,” or (2) an answer explaining why the utility believes the tariff provision does not require correction. The first option for responding to a notice to correct should be expanded to include the submission of a substitute sheet letter, rather than entirely new advice letters, where appropriate. There may be instances

where an Industry Division or other party identifies a minor issue (such as a typographical error or the need for a discrete wording change) in a tariff that does not warrant the filing and processing of an entirely new advice letter. Such circumstances are not uncommon today and are typically resolved through informal discussion and the submission of an appropriate substitute sheet letter. General Rule 8.3 should be modified to allow this more efficient process to continue to be used under appropriate circumstances.

VII. THE PROPOSED PENALTIES FOR FAILING TO COMPLY WITH AN INDUSTRY DIVISION ORDER ARE UNNECESSARY AND SHOULD BE DELETED.

The Joint Energy Utilities oppose General Rule 7.5.3, which authorizes the Commission to impose penalties where a utility “fails to submit a timely or satisfactory revision after notice by the Industry Division.” As a general matter, rejection of an advice letter is penalty enough. There is little to be gained by threatening to impose a penalty. In addition, the Joint Energy Utilities have historically enjoyed a good working relationship with the Energy Division. Indeed, we are unaware of any instance where a utility failed to submit a timely or satisfactory revision after notice by the Energy Division. The Joint Energy Utilities are unlikely to imperil their relationship and reputation with the Energy Division by failing to comply with a corrective notice. Finally, the Commission is already authorized under Public Utilities Code Section 2101 *et seq.* to seek to impose penalties on utilities that violate its orders. There is no need to reiterate this authority in GO 96-B.

VIII. CONCLUSION

WHEREFORE, for the above-stated reasons, the Joint Energy Utilities respectfully request that the Commission: (1) adopt the tiered advice letter system with the grace period suggested herein; (2) adopt the General and Energy Industry rules with the revisions proposed herein, most notably, that the current tariff numbering and governmental agency contract systems be retained; and (3) convene a workshop to address further clarifications needed to implement the new rules.

Respectfully submitted,

ANDREW L. NIVEN
ANN H. KIM

By _____/s/
ANN H. KIM

Law Department
Pacific Gas and Electric Company
Post Office Box 7442
San Francisco, CA 94120
Telephone: (415) 973-7467
Fax: (415) 973-0516
E-mail: ahk4@pge.com

Attorneys for
Pacific Gas and Electric Company

ON BEHALF OF THE JOINT ENERGY UTILITIES

January 9, 2007

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 9th day of January, 2007, I served a true copy of:

**OPENING COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY,
SOUTHERN CALIFORNIA EDISON COMPANY,
SOUTHERN CALIFORNIA GAS COMPANY, AND
SAN DIEGO GAS & ELECTRIC COMPANY
AND SOUTHWEST GAS CORPORATION
ON PROPOSED DECISION OF COMMISSIONER PEEVEY**

by electronic service to the e-mail addresses for:

The parties listed on the official service list for R.98-07-038.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 9th day of January, 2007, at San Francisco, California.

/s/
RENÉ A. THOMAS

APPENDIX A

RECOMMENDED CHANGES TO CONCLUSIONS OF LAW AND PROPOSED GENERAL ORDER 96-B

CHANGES TO CONCLUSIONS OF LAW

[Add New Conclusion of Law 5]: 5. The advice letter procedures proposed in GO 96-B should be subject to a 5 day “grace period” for a one-year period, during which the Industry Division would notify the utility of any erroneous tier designations and give the utility an opportunity to correct or re-designate the applicable tier, rather than simply rejecting the advice letter without prejudice.

CHANGES TO GENERAL RULES

4.2 Customer Notices

[Delete in its entirety]

8.2.3 Emergency Service; Service to Government Agencies

Strike the sentence: “Although the advice letter may be effective pending disposition, it shall be subject to disposition under General Rule 7.6.2.” (This sentence appears in both the first and second paragraphs.)

8.3 Notice to Correct Tariffs (second paragraph):

Within 10 business days of the issuance of the notice to correct, the utility shall submit to the Industry Division either (1) an advice letter or substitute sheet letter, if appropriate, proposing corrective action, or (2) an answer explaining why the utility believes the tariffs in question comply with the specified statute or Commission order.

8.4 Tariff Format ~~and Sheet Numbering~~

Tariff sheets shall be 8 inches wide by 11 inches long and of paper stock not less than 16lb. bond or of equal durability. Tariff sheets shall be printed, typewritten, or otherwise prepared to provide a durable record. Type size shall be 10 point or larger. Except as provided in the Industry Rules, tariff sheets shall not contain handwritten text, marks, or alterations, and any such handwritten matter shall have no effect. Only one side of a sheet shall be used, and each sheet shall have margins at top and bottom of 1 1/8 inches and a left margin of at least 1 1/8 inches. The Industry Rules may contain additional format requirements, including rules regarding maintenance of tariffs in electronic media, and may provide illustrative exhibits.

Header. On each sheet, the utility shall provide:

- (1) On the left - The name, address, and CIS number of the utility.
- (2) On the right - Cal. P.U.C. Schedule and Sheet No., with designation as an original or revised sheet (these spaces may be left blank if the appropriate Industry Rules so provide), together with the Cal. P.U.C. numbers of the sheet being cancelled, if any.

If a utility has a single rate schedule, omit the schedule number and only show the sheet number.

Footer. On each sheet, the utility shall provide:

- (1) On the left - Advice Letter No. - the number of the advice letter that is requesting approval of the tariff sheet. Decision No. - the Commission's decision number if the sheet is filed in accordance with a decision; otherwise this space is left blank.
- (2) Center - Name and title of an individual authorized by the utility to legally obligate it.
- (3) On the right - Date Filed, Effective, and Resolution No. - The date filed and the effective date shall be completed by the appropriate Industry Division; also, the resolution number approving Tier 3 advice letters shall be followed by blank spaces to be filled in by the appropriate Industry Division.

When a rate schedule or tariff rule is carried forward from one tariff sheet to another, the bottom and top of the appropriate sheets shall be marked "Continued."

~~Tariff sheet numbering shall start with 1 for the first sheet in a rate schedule, and the following sheets shall be numbered consecutively in the order in which they are to appear in the schedule. Alternatively, a utility may number its tariff sheets, other than a check sheet, to reflect the section number of the tariff as well as the sheet (e.g., sheets in Section 1 would be numbered 1-1, 1-2, and so on). A utility may not mix the two numbering systems in its tariffs. An original sheet shall be designated as such, and a revised sheet shall be designated by the revision number (e.g., "1st Revised Sheet 1, Cancels Original Sheet 1").~~

~~A tariff sheet number may not be used more than once, regardless of whether the tariff sheet to which the number is assigned ever becomes effective. Thus, if a utility modifies a tariff sheet (for example, "1st Revised Sheet 1, Cancels Original Sheet 1") before disposition of the advice letter by which the utility submitted the tariff sheet, the modified tariff sheet must bear a new number (in the example, "2nd Revised Sheet 1, Cancels Original Sheet 1") consistent with this General Rule.~~

~~A sheet to be inserted between existing effective sheets shall be designated as an original sheet and shall bear the number of the immediately preceding sheet followed by an alpha or numeric suffix. For example, to insert two new sheets between sheets 44 and 45, the first inserted sheet shall be designated as Original Sheet 44A or 44.1, and the second inserted sheet shall be designated as Original Sheet 44B or 44.2. A utility may not use both kinds of suffix in its tariffs.~~

~~Similarly, if the need arises to insert new sheets between Original Sheets 44.1 and 44.2, the first new inserted sheet shall be designated as Original Sheet 44.1.1. If a utility uses numeric suffixes (the preferred system), the utility may use zeros to clarify the sequence of the sheets; thus, the numbering in both of the following examples is acceptable:~~

~~44.1, 44.2, . . . 44.9, 44.10, 44.11 and so on;
44.01, 44.02, . . . 44.09, 44.10, 44.11 and so on.~~

~~When using numeric suffixes, as illustrated in both examples, the next sheet in sequence after tariff sheet 44.1 (or 44.01) is tariff sheet 44.2 (or tariff sheet 44.02), not tariff sheet 44.11.~~

~~The respective Industry Divisions will establish compliance schedules for those utilities that, as of June 30, 2007, do not comply with the requirements of this General Rule regarding tariff sheet numbering. Such utilities shall renumber their tariff sheets by compliance advice letter submitted in accordance with the applicable schedule. An Industry Division may excuse compliance with this numbering system by a small utility (having less than \$10 million in annual revenues) or by a utility required to file tariffs in accordance with a federal tariff format or sheet numbering system that is incompatible with the numbering system under this General Rule.~~

9.2 Burden of Establishing Confidentiality

(first paragraph):

A person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure. Any request for confidential treatment of information must reference the specific law prohibiting disclosure, the specific statutory privilege that the person believes it holds and could assert against disclosure, ~~or~~ the specific privilege the person believes the Commission may and should assert against disclosure, or the specific Commission decision which would allow the document to be kept confidential.

9.3 Procedure for Establishing Confidentiality

Whenever a person submitting a document (other than an application for rehearing) under this General Order wants the Commission to keep the entire document under seal, or in redacted and unredacted versions, that person shall submit to the reviewing Industry Division a written request for such confidential treatment. The request shall either (1) attach a copy of the protective order that applies to the information for which confidential treatment is sought, or (2) explain why it is appropriate to accord confidential treatment to the information in the first instance in the advice letter process. In the latter case, the request shall attach a proposed protective order, or reference an effective protective order applicable to advice filings previously submitted by the person. In either case, the request shall be narrowly drawn, shall identify the text and the information within the document for which confidential treatment is sought, and shall specify the grounds justifying such treatment.

Consistent with the above requirements, a utility may request confidential treatment for part of an advice letter; however, a utility may request confidential treatment for part of an advice letter that is effective pending disposition only if the utility concurrently provides access to the entire advice letter to those qualified persons on its advice letter service list who have executed a reasonable nondisclosure agreement for purposes of advice letter review.

Whenever a request for confidential treatment of all or part of an advice letter is submitted to an Industry Division, the person desiring confidential treatment of information

provided to the Commission shall at a minimum:

- (a) Include the following information in the cover sheet of the advice letter: (i) a statement that the utility is requesting confidential treatment of information filed in the advice letter; (ii) specification of the information for which the utility is seeking confidential treatment; (iii) a statement that the information will be made available to those qualified persons who execute a nondisclosure agreement; and (iv) a list of the name and contact information of the person or persons who will provide the nondisclosure agreement and access to the confidential information. The cover sheet of an advice letter, any of the information in the cover sheet, and any of the proposed tariff sheets included as part of the advice letter will not be kept confidential.
- (b) Specifically indicate the information that the person wishes to be kept confidential, clearly marking each page, or portion of a page, for which confidential treatment is requested.
- (c) Identify the length of time the person believes the information should be kept confidential and provide a detailed justification for the proposed length of time, or identify the length of time a Commission decision addressing the information authorizes the information to be kept confidential. The business sensitivity of information generally declines over time and the balancing of interests for and against disclosure may change accordingly.
- (d) Identify any specific provision of state or federal law, or Commission decision, the person believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law or decision to that information.
- (e) Identify any specific privilege, if any, the person believes it holds and may assert to prevent disclosure of information and explain in detail the applicability of that law to the information for which confidential treatment is requested.
- (f) Identify any specific privilege, if any, the person believes the Commission holds and may assert to prevent disclosure of information and explain in detail the applicability of that privilege to the information for which confidential treatment is requested.
- (g) State whether the person would object if the information were disclosed in an aggregated format.
- (h) State, to the best of one's knowledge, whether and how the person keeps the information confidential and whether the information has ever been disclosed to a person other than an employee of the utility or entity or to a non-market participant.

9.4 Duration of Confidentiality Claim

A confidentiality claim, whether or not specifically acted upon by the Commission or Industry Division, expires on the earliest of the following dates: (a) at the end of the period specified by the person in the initial confidentiality claim; **or** (b) at the end of a period specified in a specific Commission ruling or decision; ~~or (c) two years after the claim was first asserted before the Industry Division.~~ To reassert the confidentiality claim, the person must again satisfy the requirements of this General Order before the end of the confidentiality period.

9.6 Disposition of Confidentiality Claim

In the case where a protective order has not yet been issued, if the Industry Division determines that confidential treatment is warranted, review of the advice letter shall proceed in the normal fashion. If the Industry Division determines that confidential treatment is not warranted, then the Industry Division shall (1) proceed with review of the advice letter and (2) attempt to informally resolve the issue with the filing party. If the parties are unsuccessful in resolving the dispute, the filing party shall be given 10 days to appeal the confidentiality of the advice letter to the Administrative Law Judge Division. ~~reject the advice letter without prejudice.~~

CHANGES TO ENERGY INDUSTRY RULES

Energy Industry Rule 3 (Serving Advice Letters)

[Delete subsections (4) and (5).]

Energy Industry Rule 5.1 (Matters Appropriate to Tier 1)

Add new subsection (9): Service to a government agency pursuant to General Rule 8.2.3.

Energy Industry Rule 5.3 (Matters Appropriate to Tier 3)

[Delete subsection (8).]

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CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE, RM 321
ROSEMEAD CA 91770
Email: case.admin@sce.com
Status: INFORMATION

MICHAEL A. BACKSTROM ATTORNEY
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE
ROSEMEAD CA 91770
FOR: SOUTHERN CALIFORNIA EDISON COMPANY
Email: michael.backstrom@sce.com
Status: APPEARANCE

JEFFREY F. BECK ATTORNEY
COOPER, WHITE & COOPER, L.L.P.
201 CALIFORNIA ST., 17TH FLR
SAN FRANCISCO CA 94111
FOR: Evans/GTE West Coast/Happy
Valley/Hornitos/Kerman/Pinnacles/Siskiyou/Volcano/
Winterhaven
Email: smalllecs@cwclaw.com
Status: APPEARANCE

ROBIN BLACKWOOD ATTORNEY
VERIZON
600 HIDDEN RIDGE, HQE 03H29
IRVING TX 75038
FOR: GTE COMMUNICATIONS CORPORATION
Email: robin.blackwood@verizon.com
Status: APPEARANCE

JERRY R. BLOOM ATTORNEY
WINSTON & STRAWN LLP
333 SOUTH GRAND AVE, 38TH FLR
LOS ANGELES CA 90071-1543
FOR: California Cogeneration Council
Email: jbloom@winston.com
Status: APPEARANCE

ANDREW BROWN ATTORNEY
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H ST
SACRAMENTO CA 95814
FOR: CA Department of General Services
Email: abb@eslawfirm.com
Status: APPEARANCE

JOHN P. CLARKE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MCB10C
SAN FRANCISCO CA 94105
Email: jpc2@pge.com
Status: APPEARANCE

MARILYN H. ASH
U.S. TELEPACIFIC CORP.
6101 CHRISTIE AVE.
EMERYVILLE CA 94608
Email: ashm@telepacific.com
Status: APPEARANCE

RICHARD J. BALOCCO PRESIDENT
CALIFORNIA WATER ASSOCIATION
374 W. SANTA CLARA ST
SAN JOSE CA 95196
Status: APPEARANCE

Natalie Billingsley
CALIF PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS & CONSUMER ISSUES
BRANCH
505 VAN NESS AVE RM 4108
SAN FRANCISCO CA 94102-3214
Email: nxb@cpuc.ca.gov
Status: STATE-SERVICE

SCOTT BLAISING ATTORNEY
BRAUN & BLAISING, P.C.
915 L ST, STE. 1420
SACRAMENTO CA 95814
Email: blaising@braunlegal.com
Status: INFORMATION

CHARLES E. BORN MANAGER-STATE GOVERNMENT
AFFAIRS
FRONTIER, A CITIZENS TELECOMMUNICATIONS
PO BOX 340
ELK GROVE CA 95759
Email: cborn@czn.com
Status: APPEARANCE

PETER A. CASCIATO ATTORNEY
PETER A. CASCIATO P.C.
355 BRYANT ST, STE 410
SAN FRANCISCO CA 94107
FOR: Time Warner Connect/NorthPoint Communications,
Inc./Central Wireless Partnership
Email: pcasciato@sbcglobal.net
Status: APPEARANCE

DOROTHY CONNELLY DIRECTOR, GOVERNMENT
RELATIONS
AIRTOUCH COMMUNICATIONS, INC.
2999 OAK RD 5
WALNUT CREEK CA 94597-2066
Status: APPEARANCE

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Cherrie Conner

CALIF PUBLIC UTILITIES COMMISSION
MARKET STRUCTURE BRANCH
505 VAN NESS AVE AREA 3-D
SAN FRANCISCO CA 94102-3214
Email: chr@cpuc.ca.gov
Status: STATE-SERVICE

Fred L. Curry

CALIF PUBLIC UTILITIES COMMISSION
WATER ADVISORY BRANCH
505 VAN NESS AVE RM 3106
SAN FRANCISCO CA 94102-3214
Email: flc@cpuc.ca.gov
Status: STATE-SERVICE

SHEILA DEY

WESTERN MANUFACTURED HOUSING COMMUNITIES
455 CAPITOL MALL STE 800
SACRAMENTO CA 95814
Email: sheila@wma.org
Status: APPEARANCE

ROBERT J. DIPRIMIO

VALENCIA WATER COMPANY
24631 AVE ROCKEFELLER
VALENCIA CA 91355
Email: rdiprimio@valencia.com
Status: APPEARANCE

PETER M. DITO

KINDER MORGAN ENERGY PARTNERS
1100 TOWN AND COUNTRY ROAD
ORANGE CA 92868
Email: ditop@enpnet.com
Status: APPEARANCE

DANIEL W. DOUGLASS ATTORNEY

DOUGLASS & LIDDELL
21700 OXNARD ST, STE 1030
WOODLAND HILLS CA 91367
FOR: VARTEC TELCOM, INC.
Email: douglass@energyattorney.com
Status: INFORMATION

JOHN DUTCHER VICE PRESIDENT - REGULATORY
AFFAIRS

MOUNTAIN UTILITIES
3210 CORTE VALENCIA
FAIRFIELD CA 94534-7875
Email: ralf1241a@cs.com
Status: INFORMATION

HUGH COWART

BANK OF AMERICA TECHNOLOGY & OPERATIONS
FL9-400-01-10
9000 SOUTHSIDE BLVD, BUILDING 400 1ST FL
JACKSONVILLE FL 32256
Status: APPEARANCE

JANE DELAHANTY

U.S. TELEPACIFIC CORP.
515 S. FLOWER ST, 47TH FLR
LOS ANGELES CA 90071-2201
FOR: U.S. TELEPACIFIC CORP.
Email: jdelahanty@telepacific.com
Status: INFORMATION

MARY ANN DICKINSON EXECUTIVE DIRECTOR

CALIFORNIA URBAN WATER CONSERVATION
455 CAPITOL MAIL, STE 703
SACRAMENTO CA 95814
Email: maryann@cuwcc.org
Status: APPEARANCE

DAVID DISCHER ATTORNEY

PACIFIC BELL TELEPHONE COMPANY
525 MARKET ST, RM. 2027
SAN FRANCISCO CA 94105
Email: david.discher@att.com
Status: APPEARANCE

Thomas A. Doub

CALIF PUBLIC UTILITIES COMMISSION
ENERGY COST OF SERVICE & NATURAL GAS BRANCH
505 VAN NESS AVE RM 4205
SAN FRANCISCO CA 94102-3214
Email: tad@cpuc.ca.gov
Status: APPEARANCE

ELAINE M. DUNCAN ATTORNEY

VERIZON CALIFORNIA INC.
711 VAN NESS AVE, STE 300
SAN FRANCISCO CA 94102
Email: elaine.duncan@verizon.com
Status: APPEARANCE

TOM ECKHART

CAL - UCONS, INC.
10612 NE 46TH ST
KIRKLAND WA 98033
Email: tom@ucons.com
Status: APPEARANCE

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Phillip Enis

CALIF PUBLIC UTILITIES COMMISSION
CONSUMER ISSUES ANALYSIS BRANCH
505 VAN NESS AVE RM 2101
SAN FRANCISCO CA 94102-3214
Email: pje@cpuc.ca.gov
Status: STATE-SERVICE

KELLY FAUL SENIOR MANAGER
1111 SUNSET HILLS DRIVE
RESTON VA 20190
Email: kelly.faul@xo.com
Status: INFORMATION

DIANE I. FELLMAN

LAW OFFICES OF DIANE I. FELLMAN
234 VAN NESS AVE
SAN FRANCISCO CA 94102
Email: diane_fellman@fpl.com
Status: APPEARANCE

LOU FILIPOVICH

15376 LAVERNE DRIVE
SAN LEANDRO CA 94579
Status: INFORMATION

Richard Fish

CALIF PUBLIC UTILITIES COMMISSION
CARRIER BRANCH
505 VAN NESS AVE AREA 3-D
SAN FRANCISCO CA 94102-3214
Email: rff@cpuc.ca.gov
Status: STATE-SERVICE

MICHEL PETER FLORIO ATTORNEY
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVE, STE 350
SAN FRANCISCO CA 94102
Email: mflorio@turn.org
Status: APPEARANCE

JAMES E. FRANK CASE MGMT & TARIFF
ADMINISTRATION
SEMPRA ENERGY - HQ14
101 ASH ST
SAN DIEGO CA 92101-3017
Email: jfrank@semprautilities.com
Status: APPEARANCE

ENRIQUE GALLARDO
LATINO ISSUES FORUM
160 PINE ST, STE 700
SAN FRANCISCO CA 94111
Email: enriqueg@lif.org
Status: APPEARANCE

DOUG GARRETT SENIOR DIRECTOR, GOVERNMENT
AFFAIRS
ICG COMMUNICATIONS, INC.
180 GRAND AVE, STE 800
OAKLAND CA 94612
Email: doug_garrett@icgcomm.com
Status: APPEARANCE

EDWARD B. GIESEKING DIRECTOR/PRICING AND
TARIFFS
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150
Email: ed.gieseeking@swgas.com
Status: APPEARANCE

MARCO GOMEZ ATTORNEY
S.F. BAY AREA RAPID TRANSIT
PO BOX 12688
OAKLAND CA 94604-2688
Email: mgomez1@bart.gov
Status: APPEARANCE

THALIA N.C. GONZALEZ LEGAL COUNSEL
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE, 2ND FLR
BERKELEY CA 94704
Email: thaliag@greenlining.org
Status: APPEARANCE

BETSY STOVER GRANGER
PACIFIC BELL WIRELESS
4420 ROSEWOOD DRIVE, 4TH FLR
PLEASANTON CA 94588
Email: bgranger@pacbell.mobile.com
Status: APPEARANCE

RICHARD M. HAIRSTON
R.M. HAIRSTON COMPANY
1112 LA GRANDE AVE
NAPA CA 94558-2168
Status: APPEARANCE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 93

THOMAS HAMMOND
REAL TELEPHONE COMPANY
PO BOX 640410
SAN FRANCISCO CA 94164-0410
Email: cpuc.contact@realtelephone.net
Status: APPEARANCE

CHERYL HILLS
ICG COMMUNICATIONS, INC.
620 3RD ST
SAN FRANCISCO CA 94107-1902
Email: cheryl.hills@icg.com
Status: APPEARANCE

PALLE JENSEN DIRECTOR OF REGULATORY AFFAIRS
SAN JOSE WATER COMPANY
374 WEST SANTA CLARA ST
SAN JOSE CA 95196
Email: palles_jensen@sjwater.com
Status: APPEARANCE

MICHELE F. JOY GENERAL COUNSEL
ASSOCIATION OF OIL PIPE LINES
1101 VERMONT AVE NW STE 604
WASHINGTON DC 20005-3521
FOR: ASSOCIATION OF OIL PIPE LINES
Email: mjoy@aopl.org
Status: APPEARANCE

REX KNOWLES REGIONAL VICE PRESIDENT
XO COMMUNICATIONS SERVICES, INC.
111 EAST BROADWAY, STE 1000
SALT LAKE CITY UT 84111
Email: rex.knowles@xo.com
Status: INFORMATION

STEPHEN H. KUKTA COUNSEL
SPRINT NEXTEL
201 MISSION ST, STE. 1400
SAN FRANCISCO CA 94105
Email: stephen.h.kukta@sprint.com
Status: APPEARANCE

Donald J. Lafrenz
CALIF PUBLIC UTILITIES COMMISSION
RATEMAKING BRANCH
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: dlf@cpuc.ca.gov
Status: STATE-SERVICE

JO ANN G. HILL SR. MANAGER, PUBLIC POLICY
FIRSTWORLD COMMUNICATIONS
PO BOX 964
SYOSSET NY 11791-0079
Status: INFORMATION

ANDREW O. ISAR DIRECTOR, INDUSTRY RELATIONS
TELECOMMUNICATIONS RESELLERS ASSN.
7901 SKANSIE AVE 240
GIG HARBOR WA 98335
Email: aisar@millerisar.com
Status: APPEARANCE

DONALD M. JOHNSON CHIEF OPERATING OFFICER
FULL POWER CORPORATION
2130 WATERS EDGE DR.
WESTLAKE OH 44135-6602
Email: fpc_ca@pacbell.net
Status: INFORMATION

ANN KIM ATTORNEY
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, B30A
SAN FRANCISCO CA 94105
Email: ahk4@pge.com
Status: APPEARANCE

Steven Kotz
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 2106
SAN FRANCISCO CA 94102-3214
Email: kot@cpuc.ca.gov
Status: STATE-SERVICE

STEVE LAFOND PUBLIC UTILITIES DEPARTMENT
CITY OF RIVERSIDE
2911 ADAMS ST
RIVERSIDE CA 92504
Email: slafond@ci.riverside.ca.us
Status: INFORMATION

Fe N. Lazaro
CALIF PUBLIC UTILITIES COMMISSION
CARRIER BRANCH
505 VAN NESS AVE AREA 3-E
SAN FRANCISCO CA 94102-3214
Email: fnl@cpuc.ca.gov
Status: STATE-SERVICE

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ALJ Assigned: Steven Kotz on July 28, 1998

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Total number of addressees: 93

LESLA LEHTONEN STAFF ATTORNEY
CALIFORNIA CABLE TELEVISION ASSN.
360 22ND ST, NO. 750
OAKLAND CA 94612
Email: ll@calcable.org
Status: APPEARANCE

ARTHUR D. LEVY
639 FRONT ST, 4TH FLR
SAN FRANCISCO CA 94111
Email: adl@lrolaw.com
Status: APPEARANCE

KIM LOGUE REGULATORY ANALYST
LCI INTERNATIONAL TELECOM CORP.
4250 N. FAIRFAX DRIVE, 12W002
ARLINGTON VA 22203
Email: kim.logue@qwest.net
Status: APPEARANCE

JACQUE LOPEZ LEGAL ASSISTANT
VERIZON CALIFORNIA INC
CA501LB
112 LAKEVIEW CANYON ROAD
THOUSAND OAKS CA 91362
Email: jacque.lopez@verizon.com
Status: INFORMATION

JADINE LOUIE REGULATORY SERVICES
SBC CALIFORNIA
ASSOCIATE DIRECTOR
525 MARKET ST., 19FL, 7
SAN FRANCISCO CA 94105
FOR: SBC CALIFORNIA
Email: jadine.louie@att.com
Status: APPEARANCE

CHRISTINE A. MAILLOUX ATTORNEY
TURN
711 VAN NESS AVE., STE. 350
SAN FRANCISCO CA 94102
Email: cmaillox@turn.org
Status: INFORMATION

MARTIN A. MATTES ATTORNEY
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA ST, 34TH FLR
SAN FRANCISCO CA 94111
FOR: California Payphone Association
Email: mmattes@nossaman.com
Status: APPEARANCE

Wade McCartney
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
770 L ST, STE 1050
SACRAMENTO CA 95814
Email: wsm@cpuc.ca.gov
Status: STATE-SERVICE

Michael D. McNamara
CALIF PUBLIC UTILITIES COMMISSION
CARRIER BRANCH
505 VAN NESS AVE RM 3207
SAN FRANCISCO CA 94102-3214
Email: mcn@cpuc.ca.gov
Status: STATE-SERVICE

NIKAYLA K. NAIL THOMAS EXECUTIVE DIRECTOR
CALTEL
515 S. FLOWER ST, 47/F
LOS ANGELES CA 90071
Email: nnail@caltel.org
Status: APPEARANCE

ESTHER NORTHRUP
COX CALIFORNIA TELCOM
5159 FEDERAL BLVD.
SAN DIEGO CA 92105
FOR: COX CALIFORNIA TELCOM
Email: esther.northrup@cox.com
Status: INFORMATION

VALERIE J. ONTIVEROZ ANALYST/STATE REGULATORY
AFFAIRS
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150
Email: valerie.ontiveroz@swgas.com
Status: APPEARANCE

JUDY PECK
SEMPRA ENERGY UTILITIES
601 VAN NESS AVE, STE 2060
SAN FRANCISCO CA 94102
Email: jpeck@semprautilities.com
Status: INFORMATION

NORMAN A. PEDERSEN ATTORNEY
HANNA AND MORTON, LLP
444 SOUTH FLOWER ST, NO. 1500
LOS ANGELES CA 90071
Email: npedersen@hanmor.com
Status: INFORMATION

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded January 9, 2007, last updated on January 3, 2007

Commissioner Assigned: Michael R. Peevey on December 20, 2005; ALJ Assigned: John E. Thorson on April 29, 2003

ALJ Assigned: Steven Kotz on July 28, 1998

CPUC DOCKET NO. R9807038 CPUC REV 01-03-07

Total number of addressees: 93

PHUONG N. PHAM
MORRISON & FOERSTER
425 MARKET ST
SAN FRANCISCO CA 94105
Email: ppham@mofo.com
Status: APPEARANCE

JOANN RICE REGULATORY MANAGER
SBC LONG DISTANCE
5850 W. LAS POSITAS BLVD.
PLEASANTON CA 94588
Email: jr2136@camail.sbc.com
Status: INFORMATION

ANNA M. SANCHOU GENERAL MANAGER - NETWORK
REGULATORY
SOUTHWESTERN BELL MESSAGING SERVICES INC
5800 NW PARKWAY, STE. 125
SAN ANTONIO TX 78249
Email: anna.sanchou@pactel.com
Status: APPEARANCE

MARK P. SCHREIBER ATTORNEY
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA ST, 17TH FLR
SAN FRANCISCO CA 94111
FOR: SUREWEST TELEPHONE
Email: mschreiber@cwclaw.com
Status: APPEARANCE

DAVID A. SIMPSON
SIMPSON PARTNERS
900 FRONT ST
SAN FRANCISCO CA 94111
Email: david@simpsonpartners.com
Status: APPEARANCE

ROBERT A. SMITHMIDFORD VICE PRESIDENT
BANK OF AMERICA
8011 VILLA PARK DRIVE
RICHMOND VA 23228-2332
FOR: BANK OF AMERICA
Status: APPEARANCE

JAMES D. SQUERI ATTORNEY
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME ST, STE 900
SAN FRANCISCO CA 94111
FOR: CA Assn of Competitive Telecommunications Carriers
Email: jsqueri@gmssr.com
Status: APPEARANCE

ROBBIE RALPH DIRECTOR, ECONOMIC REGULATION &
TARIFF
SHELL CALIFORNIA PIPELINE COMPANY LLC
PO BOX 2648
HOUSTON TX 77252-2648
FOR: SHELL CALIFORNIA PIPELINE COMPANY LLC
Email: robbie.ralph@shell.com
Status: APPEARANCE

PATRICK M. ROSVALL ATTORNEY
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA ST, 17TH FLR
SAN FRANCISCO CA 94111
FOR: Roseville Tel/Calaveras/Cal-
Ore/Ducor/Foresthill/Ponderosa
Email: prosvall@cwclaw.com
Status: APPEARANCE

REED V. SCHMIDT VICE PRESIDENT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVE
BERKELEY CA 94703
Email: rschmidt@bartlewells.com
Status: APPEARANCE

EARL NICHOLAS SELBY ATTORNEY
LAW OFFICES OF EARL NICHOLAS SELBY
418 FLORENCE ST
PALO ALTO CA 94301
Email: ens@loens.com
Status: APPEARANCE

CECIL O. SIMPSON, JR.
US ARMY LEGAL SERVICES AGENCY
901 NORTH STUART ST, STE 713
ARLINGTON VA 22203-1837
FOR: Department of Defense/Federal Executive Agencies
Email: simpsco@hqda.army.mil
Status: APPEARANCE

BARBARA L. SNIDER ATTORNEY
CITIZENS COMMUNICATIONS COMPANY
9324 W. STOCKTON BLVD., STE 100
ELK GROVE CA 95758
Email: bsnider@czn.com
Status: APPEARANCE

PAUL A. SZYMANSKI ATTORNEY
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH ST
SAN DIEGO CA 92101
FOR: Sempra Energy Utilities/San Diego Gas &
Electric/Southern California Gas
Email: pszymanski@sempra.com
Status: APPEARANCE

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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Total number of addressees: 93

George S. Tagnipes
CALIF PUBLIC UTILITIES COMMISSION
ENERGY RESOURCES BRANCH
505 VAN NESS AVE AREA 4-A
SAN FRANCISCO CA 94102-3214
Email: jst@cpuc.ca.gov
Status: STATE-SERVICE

AARON THOMAS
AES NEWENERGY, INC.
350 S. GRAND AVE, STE 2950
LOS ANGELES CA 90071
Email: athomas@newenergy.com
Status: INFORMATION

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVE
SAN FRANCISCO CA 94107
Email: info@tobiaslo.com
Status: INFORMATION

HEIDI SIECK WILLIAMSON DEPT OF
TELECOMMUNICATIONS & INFORMATION
CITY & COUNTY OF SAN FRANCISCO
875 STEVENSON ST, 5TH FLR
SAN FRANCISCO CA 94103
Email: heidi_sieck-williamson@ci.sf.ca.us
Status: APPEARANCE

MARZIA ZAFAR
SAN DIEGO GAS & ELECTRIC/SOCAL GAS
601 VAN NESS AVE, STE 2060
SAN FRANCISCO CA 94102
Email: mzafar@semprautilities.com
Status: INFORMATION

ROLAND S. TANNER
SOUTHERN CALIFORNIA WATER COMPANY
PO BOX 9016
SAN DIMAS CA 91773
Email: rtanner@scwater.com
Status: APPEARANCE

John E. Thorson
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
505 VAN NESS AVE RM 5007
SAN FRANCISCO CA 94102-3214
Email: jet@cpuc.ca.gov
Status: STATE-SERVICE

MARY E. WAND ATTORNEY
MORRISON & FOERSTER LLP
425 MARKET ST
SAN FRANCISCO CA 94105
Email: mwand@mofo.com
Status: APPEARANCE

Sindy J. Yun
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
505 VAN NESS AVE RM 4300
SAN FRANCISCO CA 94102-3214
Email: sjy@cpuc.ca.gov
Status: APPEARANCE